

BUSINESS ASSOCIATE AGREEMENT

Customer is a “Covered Entity” under the Health Insurance Portability and Accountability Act of 1996. Pursuant to an underlying agreement (the “Agreement”) between Customer and NetHealth Limited Liability Company d/b/a Healthmonix (“Business Associate”) and relates to Business Associate’s provision of Services on Covered Entity’s behalf as described in the Background paragraphs hereof. Hereinafter, Covered Entity and Business Associate may be referred to, each, as a “Party” and, collectively, as the “Parties”.

BACKGROUND

Covered Entity has engaged Business Associate, pursuant to the underlying services agreement(s) between the Parties (as may be amended, the “Services Contract”), to provide certain services for and on behalf of Covered Entity (the “Services”) as a result of which Covered Entity may Disclose Protected Health Information to Business Associate.

To the limited extent that Business Associate creates, receives, maintains, or transmits Protected Health Information on behalf of Covered Entity in connection with Business Associate’s performance of the Services, Business Associate shall be considered a Business Associate of Covered Entity.

Covered Entity and Business Associate intend to protect the privacy and provide for the security of Protected Health Information that may be Disclosed to Business Associate in connection with the Services in compliance with this Agreement and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, along with its implementing regulations promulgated by the Secretary of the Department of Health and Human Services (“HHS”), including, the “Privacy Rule” (45 C.F.R. Part 160 and Subparts A and E of Part 164), the “Security Rule” (45 C.F.R. Part 160 and Subparts A and C of Part 164), and the “Breach Notification Rule” (45 C.F.R. Part 160 and Subparts A and D of Part 164), as each may be amended from time to time (collectively, “HIPAA”).

Covered Entity and Business Associate intend for this Agreement to meet those requirements under HIPAA that mandate a written agreement between a Covered Entity and its Business Associate, and for this Agreement to set forth each Party’s respective obligations in connection with each Party’s Use and Disclosure of Protected Health Information in connection with Business Associate’s performance of the Services.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information provided for herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENT

1. General.

1.1 Incorporation. The Background paragraphs of this Agreement are hereby incorporated into this Agreement in full.

1.2 **Definitions.** Each capitalized term appearing in this Agreement not otherwise expressly defined herein shall have the meaning ascribed to it under HIPAA. The meanings given to the terms “Disclosure” and “Use” in 45 C.F.R. 160.103 shall also apply to those capitalized terms used herein that are in the plural or in any tense or variant of the terms “Disclosure” and “Use”, such as “Disclose”, “Discloses”, “Disclosing” and “Disclosed”, and “Uses”, “Using” and “Used”, respectively. “PHI” shall mean Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by Business Associate in order for Business Associate to perform the Services. “e-PHI” shall mean Electronic Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by Business Associate in order for Business Associate to perform the Services. “Unsecured PHI” shall mean Unsecured Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by Business Associate in order for Business Associate to perform the Services.

2. **Term.** This agreement shall be effective as of the Effective Date of the Agreement and shall continue in full force indefinitely until terminated upon the earlier of either Party terminating the Agreement pursuant to Section 7.1 hereof or the termination or expiration of the Services Contract. Upon the termination of the Agreement for any reason, Section 7.2 hereof shall apply.

3. **Obligations of Covered Entity.**

3.1 **Safeguards; Encryption.** Covered Entity shall comply with HIPAA and all applicable federal and state laws governing the privacy and security of health information. Covered Entity shall implement and maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the privacy and security of PHI in accordance with the applicable standards and requirements under HIPAA. With respect to e-PHI, Covered Entity shall: (i) ensure the confidentiality, integrity, and availability of all e-PHI Covered Entity creates, receives, maintains, or transmits; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such e-PHI; (iii) protect against any reasonably anticipated uses or disclosures of such e-PHI that are not permitted or required under HIPAA; and (iv) ensure compliance with the Security Rule by its Workforce. Covered Entity shall implement security measures to protect e-PHI transmitted to Business Associate from unauthorized access, which may include use of the Transport Layer Security (“TLS”) protocol or other encryption mechanism.

3.2 **Permissible Requests; Minimum Necessary.** Covered Entity shall not request Business Associate to Use or Disclose PHI in any manner that, if done by Covered Entity, would not be permissible under HIPAA, all applicable federal and state law or any applicable third-party agreement to which Covered Entity is a party. Furthermore, Covered Entity shall Disclose to Business Associate only the amount of PHI that Covered Entity determines to be the minimum necessary for Business Associate to perform its obligations under the Services Contract. Covered Entity shall adhere to all applicable minimum necessary standards established from time to time by HHS or any other federal or state agency.

3.3 **Notice of Privacy Practices.** If Covered Entity is required under HIPAA to maintain a Notice of Privacy Practices (“NPP”), Covered Entity shall promptly provide Business Associate with its current NPP, and any amendments thereto or replacements thereof, to the extent that the

terms of the NPP will affect Business Associate's performance under the Services Contract or this Agreement or Business Associate's compliance with HIPAA.

3.4 Prompt Notification. To the extent that it affects Business Associate's performance of its obligations under this Agreement or the Services Contract or Business Associate's compliance with HIPAA, Covered Entity shall promptly notify Business Associate of any and all requests it receives by or on behalf of any and all Individuals with respect to Covered Entity's obligations under 45 C.F.R. 164.522 (restricting Disclosure of PHI), 164.524 (providing access to or a copy of PHI), 164.526 (amending PHI), or 164.528 (accounting of Disclosures of PHI).

3.5 Authority. Covered Entity represents and warrants that it is authorized under HIPAA, all applicable federal and state laws, and all applicable third-party agreements to which Covered Entity is a party to Disclose PHI to Business Associate for the purpose of Business Associate's provision of the Services. Covered Entity shall promptly notify Business Associate if the immediately preceding sentence ceases to be true, including instances where a third party implements any restriction or limitation which may affect Business Associate's ability to render the Services or to Use or Disclose PHI pursuant to the terms of this Agreement.

4. Obligations of Business Associate.

4.1 Permitted Uses and Disclosures, Generally. Subject to the terms of this Agreement and HIPAA, Business Associate may Use or Disclose any and all PHI it creates, receives, maintains or transmits on behalf of Covered Entity, as follows:

4.1.1 Purpose and Scope. Business Associate may Use or Disclose PHI as follows: (i) as permitted hereunder to provide or perform the Services; (ii) as Required by Law; or (iii) as otherwise permitted under HIPAA and applicable law.

4.1.2 Amount of Information. Business Associate may Use or disclose only the minimum necessary amount of PHI needed, in Business Associate's discretion, for Business Associate to render the Services, and Business Associate shall adhere to all applicable minimum necessary standards established from time to time by HHS or any other federal or state agency.

4.1.3 Use for Management and Administration. Business Associate may Use PHI if such Use is necessary: (i) for the proper management and administration of Business Associate; or (ii) to carry out the legal responsibilities of Business Associate.

4.1.4 Disclosure for Management and Administration. Business Associate may Disclose PHI to a third party for the proper management and administration of Business Associate if: (i) the Disclosure is Required By Law; or (ii) Business Associate obtains from such third party reasonable assurances that: (a) PHI will be held confidentially and in compliance with HIPAA, and Used or further Disclosed by such third party only as Required By Law or for the purpose for which it was Disclosed to such third party; and (b) the third party will notify Business Associate, without unreasonable delay, of any Breach or potential Breach of PHI of which such third party becomes aware. Notwithstanding the foregoing, **in no event** shall Business Associate Disclose PHI for the foregoing purposes to any third party not subject to the laws and the jurisdiction of the United States of America without the prior written consent of Covered Entity, which may be withheld in Covered Entity's reasonable discretion.

4.2 Uses or Disclosures Requiring Prior Authorization. Business Associate understands that, except as expressly provided in this Agreement or permitted under HIPAA and all applicable federal and state laws, it shall not Disclose PHI to any third party without first having received an authorization that complies with 45 C.F.R. 164.508 (“Authorization”) from the affected Individual(s). To the extent Disclosure of PHI to a third party is required for Business Associate to render the Services, Covered Entity shall assist Business Associate in obtaining, or obtain for Business Associate, the necessary Authorizations. Business Associate shall retain a copy of each Authorization it obtains pursuant to this Section 4.2 in accordance with the retention requirements set forth in 45 C.F.R. 164.508.

4.3 Prohibited Uses and Disclosures. Business Associate shall not directly or indirectly accept remuneration in exchange for Using or Disclosing any PHI, including in de-identified form, except Business Associate may accept such remuneration from Covered Entity in exchange for Services rendered by Business Associate on Covered Entity’s behalf. Furthermore, Business Associate shall not Use or Disclose PHI as follows: (i) for Marketing, except with the applicable Individual’s Authorization; (ii) other than as permitted or required by this Agreement or as Required By Law; or (iii) in any manner that would violate HIPAA or other applicable law if done by Covered Entity. Business Associate shall take reasonable measures to mitigate the harmful effect of any Use or Disclosure of PHI by Business Associate that is not in accordance with the terms of this Agreement.

4.4 Security Matters.

4.4.1 General. Business Associate shall comply with the requirements of the Security Rule, as it applies to Business Associate.

4.4.1.1 Safeguards; Encryption. Business Associate shall comply with HIPAA and all applicable federal and state laws governing the privacy and security of health information. Business Associate shall implement and maintain reasonable and appropriate administrative, technical and physical safeguards to prevent the Use or Disclosure of PHI other than as permitted under this Agreement. With respect to e-PHI, Business Associate shall: (i) ensure the confidentiality, integrity, and availability of all e-PHI Business Associate creates, receives, maintains, or transmits; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such e-PHI; (iii) protect against any reasonably anticipated uses or disclosures of such e-PHI that are not permitted or required under HIPAA; and (iv) ensure compliance with the Security Rule by its Workforce. Business Associate shall implement security measures to protect e-PHI transmitted by Business Associate from unauthorized access, which may include use of the TLS protocol or other encryption mechanism.

4.4.1.2 Documentation. Business Associate shall maintain records, in hard copy or electronic format, of the following, and retain such records in accordance with 45 C.F.R. 164.316(b)(2)(i): (i) policies and procedures implemented by Business Associate to comply with the Security Rule; and (ii) any action, activity or assessment required of Business Associate under the Security Rule.

4.4.2 Reporting Breaches and Security Incidents.

4.4.2.1 Reporting Impermissible Uses and Disclosures of PHI.

Business Associate shall comply with the notification requirements under HIPAA relating to a Breach of PHI, including the applicable provisions of the Breach Notification Rule. Business Associate shall promptly report to Covered Entity any Use or Disclosure of PHI that is not permitted under this Agreement or HIPAA, including any Breach of PHI. Business Associate shall make such report to Covered Entity within **ten (10) business days** from the date that Business Associate discovers such impermissible Use or Disclosure of PHI. For purposes of this Agreement, Business Associate shall be deemed to have “discovered” an impermissible Use or Disclosure of PHI as of: (i) the first day on which such impermissible Use or Disclosure is actually known to any person that is an agent of Business Associate in accordance with the federal common law of agency, or that is a member of Business Associate’s Workforce; or (ii) by exercising reasonable diligence, the first day on which such impermissible Use or Disclosure of PHI should have been known to Business Associate. Business Associate shall take all commercially reasonable steps to allow it to discover impermissible Uses or Disclosures of PHI.

4.4.2.2 Final Determination of Breach. Covered Entity shall be responsible for making any and all final risk assessment determinations with respect to potential Breaches of Unsecured PHI, including determining whether there is a “low probability” that any potential Breach compromised the security or privacy of Unsecured PHI.

4.4.2.3 Assistance and Cooperation. The Parties shall assist and cooperate with each other as reasonably necessary for each Party to comply with the Breach Notification Rule. Business Associate shall provide Covered Entity with such information known to Business Associate as may be required for Covered Entity to determine if a Breach of PHI occurred, and to notify affected Individuals of such event, if so required under the Breach Notification Rule. If Business Associate or any of Business Associate’s Subcontractors is the direct cause of a Breach of PHI, Business Associate shall provide Covered Entity with administrative support and other resources as may be reasonably requested by Covered Entity to assist Covered Entity to satisfy its obligations, if any, under the Breach Notification Rule. In the event that Business Associate does not provide such requested assistance and resources in a timely manner, as reasonably determined by Covered Entity, then Business Associate shall reimburse Covered Entity for all reasonable and actual costs and expenses (e.g., postage; supplies; administrative staff time, etc.) incurred by Covered Entity, as a result of Business Associate’s delay, in Covered Entity’s efforts to comply with the Breach Notification Rule.

4.4.2.4 Reporting Security Incidents. Consistent with this Section 4.4.2.4, Business Associate shall report as soon as practicable to Covered Entity any Security Incident of which Business Associate becomes aware that involves PHI. Notwithstanding the immediately foregoing sentence, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are inconsequential or harmless in nature, such as pings and port scans, and Business Associate is not required to provide Covered Entity with subsequent notification upon the occurrence of such unsuccessful Security Incidents. Nevertheless, to the extent that Business Associate becomes aware of a pattern or an unusually high number of such unsuccessful Security Incidents involving

PHI and resulting from the repeated acts by a single person or entity, Business Associate shall notify Covered Entity of such attempts.

4.4.2.5 Notice of Impermissible Use or Disclosure or Security Incident. To the extent Business Associate is required to provide Covered Entity with notice of any impermissible Use or Disclosure of PHI under Section 4.4.2.1 hereof, or any Security Incident involving PHI under Section 4.4.2.4 hereof, Business Associate shall provide such notice to Covered Entity in writing pursuant to Section 13.5 hereof (relating to issuing notices hereunder) to Covered Entity's Privacy Officer, Security Officer, or other person designated by Covered Entity for receipt of such notice or, if Covered Entity has identified an email address for such notifications, by way of electronic mail to the email address identified by Covered Entity.

4.5 Requested Restrictions. To the extent instructed by Covered Entity in writing, Business Associate shall comply with a request by an Individual to restrict Disclosure of the Individual's PHI to a health plan in accordance with 45 C.F.R. 164.522. Business Associate shall promptly direct to Covered Entity all such requests Business Associate receives directly from an Individual.

4.6 Availability of Information. Business Associate shall make available to Covered Entity such information in Business Associate's possession that is necessary to permit Covered Entity to fulfill its obligations to provide access to, provide a copy of, to amend and to account for Disclosures of PHI pursuant to 45 C.F.R. 164.524, 164.526, and 164.528.

4.7 Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

4.8 Business Associate's Subcontractors. Business Associate shall enter into a written agreement with each of its Subcontractors that Use or Disclose PHI that satisfies the applicable requirements under HIPAA with respect to Subcontractor's Use or Disclosure of PHI (the "Subcontractor Agreement"). In the event that Business Associate knows of a pattern of activity or practice of any of those Subcontractors that constitutes a material breach or material violation of the applicable Subcontractor Agreement, Business Associate shall take reasonable steps to, or shall cause such Subcontractor to, cure such breach or end such violation, as applicable. If such steps to cure such breach or end such violation are unsuccessful, Business Associate shall terminate the applicable Subcontractor Agreement and, to the extent feasible, those provisions of such Subcontractor's underlying services agreement or arrangement with Business Associate that requires the Use or Disclosure of PHI.

4.9 Internal Practices. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to HHS for purposes of determining Covered Entity's compliance with HIPAA.

4.10 Application of Privacy Rule. To the extent Business Associate is to carry out a function or obligation of Covered Entity with respect to the Privacy Rule, Business Associate shall comply with the requirements under the Privacy Rule that apply to Covered Entity in the performance of such function or obligation.

5. **State Law.** Business Associate and Covered Entity shall comply with any provision or requirement concerning privacy or security of information under any state law applicable to Business Associate's Use and Disclosure of PHI that is more stringent than a similar provision or requirement under HIPAA, as provided in 45 C.F.R. 160.203.

6. **Information on Safeguards.** Upon Covered Entity's reasonable request, which shall be in writing, Business Associate shall provide Covered Entity with information concerning the safeguards and/or other information security practices that the Business Associate utilizes to protect the confidentiality of PHI in its possession.

7. **Termination.**

7.1 **Terminable Events.**

7.1.1 **Noncompliance.** If either Party (the "Notifying Party") becomes aware of an activity or practice by the other Party (the "Breaching Party") that constitutes a material breach or material violation of the Breaching Party's obligations under this Agreement, HIPAA or any other applicable privacy or security law, the Notifying Party shall notify the Breaching Party of such breach or violation. Thereafter, the Breaching Party shall have an opportunity to cure such breach or end such violation, as applicable, within a reasonable timeframe as agreed to by the Parties (the "Cure Period"). Following receipt of the aforementioned notice, if the Breaching Party does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, then, following the expiration of the Cure Period, the Notifying Party is permitted to terminate this Agreement. An activity or practice that shall constitute a material breach hereof, as referenced in the first sentence of this Section 7.1.1, shall include the following occurrences: (i) the other Party is named as a defendant in a criminal proceeding that involves a violation of HIPAA; or (ii) a finding or stipulation is made in any administrative or civil proceeding, in which such other Party has been joined, that the other Party has violated any standard or requirement of HIPAA or other applicable security or privacy law or regulation, federal or state. The foregoing is not intended to, and does not, limit any other remedy which may be available to the Notifying Party hereunder or as a matter of law.

7.1.2 **Completion of Services Requiring Use or Disclosure of PHI.** In the event that Business Associate's continued representation of Covered Entity no longer requires Business Associate to Use or Disclose PHI, either Party shall be permitted to terminate this Agreement upon so notifying the other Party of such intent in writing.

7.2 **Effect of Termination.** Upon termination of this Agreement or the Services Contract for any reason, Business Associate shall return to Covered Entity, or destroy, all PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI, or if return or destruction of all or any portion of PHI is not feasible as determined by Business Associate, Business Associate shall, at Covered Entity's reasonable expense, continue to extend the protections of this Agreement to such information, and limit further Use or Disclosure of PHI to those purposes that make the return or destruction of such PHI infeasible. Any term or provision of this Agreement that, by its nature, is intended to survive the termination of this Agreement, shall survive the termination of this Agreement, including this Section 7.2 and Sections 4.4.1, 4.4.2, 10, 13 and 14 hereof.

8. **Disclaimer.** Neither Party represents or warrants to the other Party that compliance by the other Party with this Agreement will be adequate or satisfactory for such other Party's own purposes, including such other Party's compliance with applicable law, or that any information in such other Party's possession or control, or transmitted or received by such other Party, is or will be secure from unauthorized Use or Disclosure. Each Party is solely responsible for all decisions made by such Party regarding the safeguarding of PHI.

9. **Change of Law.** The Parties acknowledge that state and federal law and regulation relating to electronic data security and privacy, including, HIPAA, are rapidly evolving and that the Parties may be required to amend this Agreement in order to ensure each Party's compliance with applicable law or regulation. Accordingly, if either Party reasonably determines that this Agreement must be amended in order for the Parties to be compliant with applicable law or regulation, such Party shall so notify the other Party, and the Parties shall then promptly enter into negotiations concerning the terms of such amendment, to the extent required for the Parties to be compliant with applicable law or regulation. If either Party requests an amendment to this Agreement pursuant to this Section 9 and (i) the other Party fails to promptly enter into negotiations to establish the terms of such amendment or (ii) the other Party refuses to enter into the agreed upon amendment following such negotiations or terminates such negotiations, then either Party may terminate this Agreement and that portion of the Services Contract that requires or permits Covered Entity to Disclose PHI to Business Associate, upon thirty (30) days' advance written notice to the other Party.

10. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and Business Associate and their respective heirs, representatives, successors and assigns, any rights, remedies, obligations or liabilities whatsoever, whether as creditor beneficiary, donor beneficiary or otherwise.

11. **Independent Contractor.** Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint venturers or any similar relationship, between the Parties hereto. Covered Entity and Business Associate acknowledge that Business Associate is an independent contractor, and not an agent, of Covered Entity, and Business Associate shall be solely liable for the payment of all income, unemployment, workers' compensation, Social Security insurance or similar taxes or assessments on the fees or other remuneration paid or to be paid to Business Associate by Covered Entity.

12. **Insurance.** Each Party represents and warrants that it currently maintains one or more liability insurance policies, with reputable carriers, at commercially reasonable coverage limits, based on the size, operations and business of such Party. Each Party shall maintain such coverage throughout the term of this Agreement.

13. **Miscellaneous.**

13.1 **Entire Agreement.** This Agreement supersedes all prior or contemporaneous agreements, written, oral or electronic, between Covered Entity and Business Associate with

respect to the subject matter hereof and contains the entire understanding and agreement between the Parties with respect to the subject matter hereof.

13.2 Governing Law. This Agreement shall be governed by and construed in accordance with the applicable law governing the Services Contract without regard to conflict of laws principles.

13.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective heirs, representatives, successors and assigns.

13.4 Mutual Negotiation. Each and every provision of this Agreement has been mutually negotiated, prepared and drafted and, in connection with the construction of any provisions hereof, no consideration shall be given to the issue of which Party actually prepared, drafted, requested or negotiated any provision of this Agreement, or its deletion.

13.5 Notices. Except as otherwise expressly permitted under Section 4.4.2.5, all notices, demands and other communications to be made by either Party under this Agreement (“Notice”) shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by confirmed facsimile transmission, confirmed (read receipt) email, recognized overnight courier service which provides a receipt against delivery, or certified or registered mail, postage prepaid, return receipt requested, to the other Party at the address provided by such other Party to the first Party from time to time. Notice shall be deemed effective, if personally delivered, when delivered; if sent by confirmed facsimile transmission, when sent; if sent by confirmed email, when read; if sent by overnight delivery, on the first business day after being sent; and if mailed in accordance herewith, at midnight on the third business day after such Notice is deposited with the U.S. Postal Service.

13.6 Modification. This Agreement shall be amended or superseded only by a written instrument that references this Agreement and is signed by both Parties.

13.7 Preservation of Rights. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. No term of this Agreement shall be deemed waived unless such waiver is in writing and such writing is signed by the Party waiving compliance with such term.

13.8 Provisions Severable. The provisions of this Agreement are independent of and severable from each other. No provision will be affected or rendered invalid or unenforceable by virtue of the fact that, for any reason, any one or more of any of the provisions of this Agreement may be deemed invalid or unenforceable in whole or in part.

13.9 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties. For purposes of this Agreement, signatures received electronically or by facsimile transmission shall be deemed original signatures.

13.10 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with, and is consistent with, HIPAA. In the event of any conflict with respect to the subject matter of this Agreement between the provisions of this Agreement and the Services Contract, the provisions of this Agreement shall be controlling and effective to the extent of such conflict. The headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions. Furthermore, any reference in this Agreement to a section in HIPAA or any other law, regulation or guidance means such referenced authority as in effect from time to time. The words “include” or “including” are intended to be interpreted as if followed in each case by the words “without limitation”. For purposes of this Agreement, unless the context of this Agreement clearly requires otherwise, (i) the word “or,” has the inclusive meaning represented by the phrase “and/or”; (ii) the word “hereof” shall have the same meaning as the phrase “of this Agreement”; and (iii) the word “hereunder” shall have the same meaning as the phrase “under this Agreement”.

13.11 Limitation on Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY HERETO FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.